

**ASSEMBLY BILL**

**No. 297**

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**Introduced by Assembly Member Solorio**

February 17, 2009

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An act to amend Section 11105 of, and to add Section 11105.06 to, the Penal Code, relating to criminal history information.

LEGISLATIVE COUNSEL'S DIGEST

AB 297, as introduced, Solorio. Criminal history information: law enforcement employees.

Existing law requires the Department of Justice to maintain various data and information pertaining to criminal history information and to disclose that information under specified circumstances to various specified recipients.

This bill would require the department to disseminate the date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests, as specified. The bill would also require the department to retain an individual's fingerprint images and related information submitted as part of a peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search request, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11105 of the Penal Code is amended to  
2     read:

1 11105. (a) (1) The Department of Justice shall maintain state  
2 summary criminal history information.

3 (2) As used in this section:

4 (A) "State summary criminal history information" means the  
5 master record of information compiled by the Attorney General  
6 pertaining to the identification and criminal history of any person,  
7 such as name, date of birth, physical description, fingerprints,  
8 photographs, date of arrests, arresting agencies and booking  
9 numbers, charges, dispositions, and similar data about the person.

10 (B) "State summary criminal history information" does not refer  
11 to records and data compiled by criminal justice agencies other  
12 than the Attorney General, nor does it refer to records of complaints  
13 to or investigations conducted by, or records of intelligence  
14 information or security procedures of, the office of the Attorney  
15 General and the Department of Justice.

16 (b) The Attorney General shall furnish state summary criminal  
17 history information to any of the following, if needed in the course  
18 of their duties, provided that when information is furnished to  
19 assist an agency, officer, or official of state or local government,  
20 a public utility, or any other entity, in fulfilling employment,  
21 certification, or licensing duties, Chapter 1321 of the Statutes of  
22 1974 and Section 432.7 of the Labor Code shall apply:

23 (1) The courts of the state.

24 (2) Peace officers of the state, as defined in Section 830.1,  
25 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section  
26 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision  
27 (a) of Section 830.31.

28 (3) District attorneys of the state.

29 (4) Prosecuting city attorneys of any city within the state.

30 (5) City attorneys pursuing civil gang injunctions pursuant to  
31 Section 186.22a, or drug abatement actions pursuant to Section  
32 3479 or 3480 of the Civil Code, or Section 11571 of the Health  
33 and Safety Code.

34 (6) Probation officers of the state.

35 (7) Parole officers of the state.

36 (8) A public defender or attorney of record when representing  
37 a person in proceedings upon a petition for a certificate of  
38 rehabilitation and pardon pursuant to Section 4852.08.

39 (9) A public defender or attorney of record when representing  
40 a person in a criminal case, or parole revocation or revocation

1 extension proceeding, and if authorized access by statutory or  
2 decisional law.

3 (10) Any agency, officer, or official of the state if the criminal  
4 history information is required to implement a statute or regulation  
5 that expressly refers to specific criminal conduct applicable to the  
6 subject person of the state summary criminal history information,  
7 and contains requirements or exclusions, or both, expressly based  
8 upon that specified criminal conduct. The agency, officer, or  
9 official of the state authorized by this paragraph to receive state  
10 summary criminal history information may also transmit fingerprint  
11 images and related information to the Department of Justice to be  
12 transmitted to the Federal Bureau of Investigation.

13 (11) Any city or county, city and county, district, or any officer  
14 or official thereof if access is needed in order to assist that agency,  
15 officer, or official in fulfilling employment, certification, or  
16 licensing duties, and if the access is specifically authorized by the  
17 city council, board of supervisors, or governing board of the city,  
18 county, or district if the criminal history information is required  
19 to implement a statute, ordinance, or regulation that expressly  
20 refers to specific criminal conduct applicable to the subject person  
21 of the state summary criminal history information, and contains  
22 requirements or exclusions, or both, expressly based upon that  
23 specified criminal conduct. The city or county, city and county,  
24 district, or the officer or official thereof authorized by this  
25 paragraph may also transmit fingerprint images and related  
26 information to the Department of Justice to be transmitted to the  
27 Federal Bureau of Investigation.

28 (12) The subject of the state summary criminal history  
29 information under procedures established under Article 5  
30 (commencing with Section 11120).

31 (13) Any person or entity when access is expressly authorized  
32 by statute if the criminal history information is required to  
33 implement a statute or regulation that expressly refers to specific  
34 criminal conduct applicable to the subject person of the state  
35 summary criminal history information, and contains requirements  
36 or exclusions, or both, expressly based upon that specified criminal  
37 conduct.

38 (14) Health officers of a city, county, city and county, or district  
39 when in the performance of their official duties enforcing Section  
40 120175 of the Health and Safety Code.

1 (15) Any managing or supervising correctional officer of a  
2 county jail or other county correctional facility.

3 (16) Any humane society, or society for the prevention of cruelty  
4 to animals, for the specific purpose of complying with Section  
5 14502 of the Corporations Code for the appointment of level 1  
6 humane officers.

7 (17) Local child support agencies established by Section 17304  
8 of the Family Code. When a local child support agency closes a  
9 support enforcement case containing summary criminal history  
10 information, the agency shall delete or purge from the file and  
11 destroy any documents or information concerning or arising from  
12 offenses for or of which the parent has been arrested, charged, or  
13 convicted, other than for offenses related to the parent's having  
14 failed to provide support for minor children, consistent with the  
15 requirements of Section 17531 of the Family Code.

16 (18) County child welfare agency personnel who have been  
17 delegated the authority of county probation officers to access state  
18 summary criminal history information pursuant to Section 272 of  
19 the Welfare and Institutions Code for the purposes specified in  
20 Section 16504.5 of the Welfare and Institutions Code. Information  
21 from criminal history records provided pursuant to this subdivision  
22 shall not be used for any purposes other than those specified in  
23 this section and Section 16504.5 of the Welfare and Institutions  
24 Code. When an agency obtains records obtained both on the basis  
25 of name checks and fingerprint checks, final placement decisions  
26 shall be based only on the records obtained pursuant to the  
27 fingerprint check.

28 (19) The court of a tribe, or court of a consortium of tribes, that  
29 has entered into an agreement with the state pursuant to Section  
30 10553.1 of the Welfare and Institutions Code. This information  
31 may be used only for the purposes specified in Section 16504.5  
32 of the Welfare and Institutions Code and for tribal approval or  
33 tribal licensing of foster care or adoptive homes. Article 6  
34 (commencing with Section 11140) shall apply to officers, members,  
35 and employees of a tribal court receiving criminal record offender  
36 information pursuant to this section.

37 (20) Child welfare agency personnel of a tribe or consortium  
38 of tribes that has entered into an agreement with the state pursuant  
39 to Section 10553.1 of the Welfare and Institutions Code and to  
40 whom the state has delegated duties under paragraph (2) of

subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United

1 States, provided that access to records similar to state summary  
2 criminal history information is expressly authorized by a statute  
3 of the United States, other states, or possessions or territories of  
4 the United States if the information is needed for the performance  
5 of their official duties.

6 (6) To any person when disclosure is requested by a probation,  
7 parole, or peace officer with the consent of the subject of the state  
8 summary criminal history information and for purposes of  
9 furthering the rehabilitation of the subject.

10 (7) The courts of the United States, other states, or territories  
11 or possessions of the United States.

12 (8) Peace officers of the United States, other states, or territories  
13 or possessions of the United States.

14 (9) To any individual who is the subject of the record requested  
15 if needed in conjunction with an application to enter the United  
16 States or any foreign nation.

17 (10) (A) Any public utility, as defined in Section 216 of the  
18 Public Utilities Code, or any cable corporation as defined in  
19 subparagraph (B), if receipt of criminal history information is  
20 needed in order to assist in employing current or prospective  
21 employees, contract employees, or subcontract employees who,  
22 in the course of their employment may be seeking entrance to  
23 private residences or adjacent grounds. The information provided  
24 shall be limited to the record of convictions and any arrest for  
25 which the person is released on bail or on his or her own  
26 recognizance pending trial.

27 If the Attorney General supplies the data pursuant to this  
28 paragraph, the Attorney General shall furnish a copy of the data  
29 to the current or prospective employee to whom the data relates.

30 Any information obtained from the state summary criminal  
31 history is confidential and the receiving public utility or cable  
32 corporation shall not disclose its contents, other than for the  
33 purpose for which it was acquired. The state summary criminal  
34 history information in the possession of the public utility or cable  
35 corporation and all copies made from it shall be destroyed not  
36 more than 30 days after employment or promotion or transfer is  
37 denied or granted, except for those cases where a current or  
38 prospective employee is out on bail or on his or her own  
39 recognizance pending trial, in which case the state summary

1 criminal history information and all copies shall be destroyed not  
2 more than 30 days after the case is resolved.

3 A violation of this paragraph is a misdemeanor, and shall give  
4 the current or prospective employee who is injured by the violation  
5 a cause of action against the public utility or cable corporation to  
6 recover damages proximately caused by the violations. Any public  
7 utility's or cable corporation's request for state summary criminal  
8 history information for purposes of employing current or  
9 prospective employees who may be seeking entrance to private  
10 residences or adjacent grounds in the course of their employment  
11 shall be deemed a "compelling need" as required to be shown in  
12 this subdivision.

13 Nothing in this section shall be construed as imposing any duty  
14 upon public utilities or cable corporations to request state summary  
15 criminal history information on any current or prospective  
16 employees.

17 (B) For purposes of this paragraph, "cable corporation" means  
18 any corporation or firm that transmits or provides television,  
19 computer, or telephone services by cable, digital, fiber optic,  
20 satellite, or comparable technology to subscribers for a fee.

21 (C) Requests for federal-level criminal history information  
22 received by the Department of Justice from entities authorized  
23 pursuant to subparagraph (A) shall be forwarded to the Federal  
24 Bureau of Investigation by the Department of Justice. Federal-level  
25 criminal history information received or compiled by the  
26 Department of Justice may then be disseminated to the entities  
27 referenced in subparagraph (A), as authorized by law.

28 (D) (i) Authority for a cable corporation to request state or  
29 federal-level criminal history information under this paragraph  
30 shall commence July 1, 2005.

31 (ii) Authority for a public utility to request federal-level criminal  
32 history information under this paragraph shall commence July 1,  
33 2005.

34 (11) To any campus of the California State University or the  
35 University of California, or any four-year college or university  
36 accredited by a regional accreditation organization approved by  
37 the United States Department of Education, if needed in  
38 conjunction with an application for admission by a convicted felon  
39 to any special education program for convicted felons, including,  
40 but not limited to, university alternatives and halfway houses. Only

1 conviction information shall be furnished. The college or university  
2 may require the convicted felon to be fingerprinted, and any inquiry  
3 to the department under this section shall include the convicted  
4 felon's fingerprints and any other information specified by the  
5 department.

6 (d) Whenever an authorized request for state summary criminal  
7 history information pertains to a person whose fingerprints are on  
8 file with the Department of Justice and the department has no  
9 criminal history of that person, and the information is to be used  
10 for employment, licensing, or certification purposes, the fingerprint  
11 card accompanying the request for information, if any, may be  
12 stamped "no criminal record" and returned to the person or entity  
13 making the request.

14 (e) Whenever state summary criminal history information is  
15 furnished as the result of an application and is to be used for  
16 employment, licensing, or certification purposes, the Department  
17 of Justice may charge the person or entity making the request a  
18 fee that it determines to be sufficient to reimburse the department  
19 for the cost of furnishing the information. In addition, the  
20 Department of Justice may add a surcharge to the fee to fund  
21 maintenance and improvements to the systems from which the  
22 information is obtained. Notwithstanding any other law, any person  
23 or entity required to pay a fee to the department for information  
24 received under this section may charge the applicant a fee sufficient  
25 to reimburse the person or entity for this expense. All moneys  
26 received by the department pursuant to this section, Sections  
27 11105.3 and 12054 of the Penal Code, and Section 13588 of the  
28 Education Code shall be deposited in a special account in the  
29 General Fund to be available for expenditure by the department  
30 to offset costs incurred pursuant to those sections and for  
31 maintenance and improvements to the systems from which the  
32 information is obtained upon appropriation by the Legislature.

33 (f) Whenever there is a conflict, the processing of criminal  
34 fingerprints and fingerprints of applicants for security guard or  
35 alarm agent registrations or firearms qualification permits  
36 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4  
37 of the Business and Professions Code shall take priority over the  
38 processing of other applicant fingerprints.



1 (g) It is not a violation of this section to disseminate statistical  
2 or research information obtained from a record, provided that the  
3 identity of the subject of the record is not disclosed.

4 (h) It is not a violation of this section to include information  
5 obtained from a record in (1) a transcript or record of a judicial or  
6 administrative proceeding or (2) any other public record if the  
7 inclusion of the information in the public record is authorized by  
8 a court, statute, or decisional law.

9 (i) Notwithstanding any other law, the Department of Justice  
10 or any state or local law enforcement agency may require the  
11 submission of fingerprints for the purpose of conducting summary  
12 criminal history information checks that are authorized by law.

13 (j) The state summary criminal history information shall include  
14 any finding of mental incompetence pursuant to Chapter 6  
15 (commencing with Section 1367) of Title 10 of Part 2 arising out  
16 of a complaint charging a felony offense specified in Section 290.

17 (k) (1) This subdivision shall apply whenever state or federal  
18 summary criminal history information is furnished by the  
19 Department of Justice as the result of an application by an  
20 authorized agency or organization and the information is to be  
21 used for peace officer employment or certification purposes. As  
22 used in this subdivision, a peace officer is defined in Chapter 4.5  
23 (commencing with Section 830) of Title 3 of Part 2.

24 (2) Notwithstanding any other provision of law, whenever state  
25 summary criminal history information is furnished pursuant to  
26 paragraph (1), the Department of Justice shall disseminate the  
27 following information:

28 (A) Every conviction rendered against the applicant.

29 (B) Every arrest for an offense for which the applicant is  
30 presently awaiting trial, whether the applicant is incarcerated or  
31 has been released on bail or on his or her own recognizance  
32 pending trial.

33 (C) Every arrest or detention, except for an arrest or detention  
34 resulting in an exoneration, provided however that where the  
35 records of the Department of Justice do not contain a disposition  
36 for the arrest, the Department of Justice first makes a genuine effort  
37 to determine the disposition of the arrest.

38 (D) Every successful diversion.

39 (E) *Every date and agency name associated with all retained*  
40 *peace officer or nonsworn law enforcement agency employee*

1 *preemployment criminal offender record information search*  
2 *requests.*

3 (l) (1) This subdivision shall apply whenever state or federal  
4 summary criminal history information is furnished by the  
5 Department of Justice as the result of an application by a criminal  
6 justice agency or organization as defined in Section 13101 of the  
7 Penal Code, and the information is to be used for criminal justice  
8 employment, licensing, or certification purposes.

9 (2) Notwithstanding any other provision of law, whenever state  
10 summary criminal history information is furnished pursuant to  
11 paragraph (1), the Department of Justice shall disseminate the  
12 following information:

13 (A) Every conviction rendered against the applicant.

14 (B) Every arrest for an offense for which the applicant is  
15 presently awaiting trial, whether the applicant is incarcerated or  
16 has been released on bail or on his or her own recognizance  
17 pending trial.

18 (C) Every arrest for an offense for which the records of the  
19 Department of Justice do not contain a disposition or did not result  
20 in a conviction, provided that the Department of Justice first makes  
21 a genuine effort to determine the disposition of the arrest. However,  
22 information concerning an arrest shall not be disclosed if the  
23 records of the Department of Justice indicate or if the genuine  
24 effort reveals that the subject was exonerated, successfully  
25 completed a diversion or deferred entry of judgment program, or  
26 the arrest was deemed a detention.

27 (D) *Every date and agency name associated with all retained*  
28 *peace officer or non-sworn law enforcement agency employee*  
29 *pre-employment criminal offender record information search*  
30 *requests.*

31 (m) (1) This subdivision shall apply whenever state or federal  
32 summary criminal history information is furnished by the  
33 Department of Justice as the result of an application by an  
34 authorized agency or organization pursuant to Section 1522,  
35 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or  
36 any statute that incorporates the criteria of any of those sections  
37 or this subdivision by reference, and the information is to be used  
38 for employment, licensing, or certification purposes.

39 (2) Notwithstanding any other provision of law, whenever state  
40 summary criminal history information is furnished pursuant to

1 paragraph (1), the Department of Justice shall disseminate the  
2 following information:

3 (A) Every conviction of an offense rendered against the  
4 applicant.

5 (B) Every arrest for an offense for which the applicant is  
6 presently awaiting trial, whether the applicant is incarcerated or  
7 has been released on bail or on his or her own recognizance  
8 pending trial.

9 (C) Every arrest for an offense for which the Department of  
10 Social Services is required by paragraph (1) of subdivision (a) of  
11 Section 1522 of the Health and Safety Code to determine if an  
12 applicant has been arrested. However, if the records of the  
13 Department of Justice do not contain a disposition for an arrest,  
14 the Department of Justice shall first make a genuine effort to  
15 determine the disposition of the arrest.

16 (3) Notwithstanding the requirements of the sections referenced  
17 in paragraph (1) of this subdivision, the Department of Justice  
18 shall not disseminate information about an arrest subsequently  
19 deemed a detention or an arrest that resulted in either the successful  
20 completion of a diversion program or exoneration.

21 (n) (1) This subdivision shall apply whenever state or federal  
22 summary criminal history information, to be used for employment,  
23 licensing, or certification purposes, is furnished by the Department  
24 of Justice as the result of an application by an authorized agency,  
25 organization, or individual pursuant to any of the following:

26 (A) Paragraph (9) of subdivision (c), when the information is  
27 to be used by a cable corporation.

28 (B) Section 11105.3 or 11105.4.

29 (C) Section 15660 of the Welfare and Institutions Code.

30 (D) Any statute that incorporates the criteria of any of the  
31 statutory provisions listed in subparagraph (A), (B), or (C), or of  
32 this subdivision, by reference.

33 (2) With the exception of applications submitted by  
34 transportation companies authorized pursuant to Section 11105.3,  
35 and notwithstanding any other provision of law, whenever state  
36 summary criminal history information is furnished pursuant to  
37 paragraph (1), the Department of Justice shall disseminate the  
38 following information:

39 (A) Every conviction rendered against the applicant for a  
40 violation or attempted violation of any offense specified in

subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 550 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 550 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section

1 or this subdivision by reference, and the information is to be used  
2 for employment, licensing, or certification purposes.

3 (2) Notwithstanding any other provisions of law, whenever state  
4 summary criminal history information is furnished pursuant to  
5 paragraph (1), the Department of Justice shall disseminate the  
6 following information:

7 (A) Every conviction rendered against the applicant.

8 (B) Every arrest for an offense for which the applicant is  
9 presently awaiting trial, whether the applicant is incarcerated or  
10 has been released on bail or on his or her own recognizance  
11 pending trial.

12 (q) All agencies, organizations, or individuals defined in  
13 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the  
14 Department of Justice for subsequent arrest notification pursuant  
15 to Section 11105.2. This subdivision shall not supersede sections  
16 that mandate an agency, organization, or individual to contract  
17 with the Department of Justice for subsequent arrest notification  
18 pursuant to Section 11105.2.

19 (r) Nothing in this section shall be construed to mean that the  
20 Department of Justice shall cease compliance with any other  
21 statutory notification requirements.

22 (s) The provisions of Section 50.12 of Title 28 of the Code of  
23 Federal Regulations are to be followed in processing federal  
24 criminal history information.

25 SEC. 2. Section 11105.06 is added to the Penal Code, to read:

26 11105.06. The Department of Justice shall retain an individual's  
27 fingerprint images and related information submitted as part of a  
28 peace officer or nonsworn law enforcement agency employee  
29 preemployment criminal offender record information search  
30 request. When responding to pre-employment criminal offender  
31 record information search requests pursuant to subdivision (k) or  
32 (l) of Section 11105, the department shall disseminate the request  
33 date and requesting agency name associated with all retained peace  
34 officer and nonsworn law enforcement agency employee  
35 information search requests.